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BRIZENDINE *v.* PAITSEL.

Sept. 22, 1921.

[108 S. E. 842.]

Easements (§ 17 (1)*)—Right of Way as between Grantees of Common Grantor Held Controlled by the Deeds, and Not to Include Way as Previously Used.—Where owner of a tract of land conveyed a portion, including land being used as a roadway, without reservation as to use of roadway, to one purchaser, and conveyed to second purchaser another portion, including the right of "ingress and egress through and over the road lying between land of B. (first purchaser) and land of a third purchaser," and where description in deed to first purchaser and map filed therewith showed conclusively that grantor intended to convey to first purchaser the bed of such roadway, second purchaser's successor in interest was not entitled to use the old roadway, though first purchaser for 14 years permitted roadway to be used, and though the land between first purchaser's land and third purchaser's land could not be used as roadway until after difficulties and obstructions had been overcome.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 857.]

Appeal from Circuit Court, Roanoke County.

Bill by F. A. Paitsel against M. Zadok Brizendine. Decree for plaintiff, and defendant appeals. Reversed, and bill dismissed.

Kime & Kime, of Roanoke, for appellant.

Hart & Hart, of Roanoke, for appellee.

FANT *v.* THOMAS et al.

Sept. 22, 1921.

[108 S. E. 847.]

1. Principal and Agent (§ 123 (10)*)—Evidence Held Sufficient to Show that the Agent of Payee Was Authorized to Accept Overdue Interest.—In suit to enjoin foreclosure of deed of trust authorizing foreclosure on default in paying interest, evidence held sufficient to show that payee of note authorized her banker to accept overdue interest.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 254.]

2. Mortgages (§ 335*)—Acceleration Clause Held Valid.—A condition in a deed of trust that, on default in payment of interest the payee of the note secured could cause land to be sold, does not create a penalty or forfeiture against which a court of equity will relieve.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 112.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.